

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW MCDERMOTT,

Plaintiff,

-v-

THIS DOG's LIFE CORP.,

Defendant.

23 Civ. 5869 (PAE)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Currently pending is a motion by defendant This Dog's Life Corp. ("TDL Corp.") to dismiss plaintiff Matthew McDermott's Amended Complaint ("FAC"). Dkt. 19. The FAC alleges that TDL Corp. violated the Copyright Act, 17 U.S.C. § 101 *et seq.*, by displaying McDermott's copyrighted photograph on its website without his permission. Dkt. 22. On December 19, 2023, TDL Corp. moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that the FAC's claim is barred by the applicable statute of limitations. Dkt. 23. That day, the Court referred the motion to United States Magistrate Judge Robert W. Lehrburger for a Report and Recommendation. Dkt. 21. Before the Court is Judge Lehrburger's April 4, 2024, Report and Recommendation, recommending that the motion to dismiss be denied. Dkt. 27 ("Report"). For the following reasons, the Court adopts the Report's recommendation in its entirety.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has


been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Objections to the Report were due on April 18, 2024. Report at 11. As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Lehrburger’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that “the parties shall have fourteen (14) days to file written objections” and that “[f]ailure to file timely objections will result in a waiver of the right to object and will preclude appellate review,” Report at 11, the parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court denies the motion to dismiss. Pursuant to Federal Rule of Civil Procedure 12(a)(4)(A), defendant must answer the FAC by May 6, 2024.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: April 22, 2024
New York, New York